

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DARLENE McDAY, individually and as Executrix of
the Estate of DANTE TAYLOR,
and TEMPLE McDAY,

Plaintiffs,

NOTICE OF MOTION

– against –

No. 1:20-cv-00233

STEWART ECKERT, Superintendent, Wende Correctional Facility;
MARGARET STIRK, Unit Chief, Wende Correctional Facility;
KRISTEN MURATORE, Forensic Program Administrator, Wende Correctional Facility;
SERGEANT TIMOTHY LEWALSKI;
SERGEANT SCOTT LAMBERT;
CORRECTION OFFICER McDONALD;
CORRECTION OFFICER FREEMAN;
CORRECTION OFFICER THOMAS WHITE;
CORRECTION OFFICER J. HORBETT;
CORRECTION OFFICER D. JANIS;
CORRECTION OFFICER MELVIN MALDONADO;
CORRECTION OFFICER MARK COLLETT;
CORRECTION OFFICER GREIGHTON;
CORRECTION OFFICER THEAL; CORRECTION OFFICER BARON;
JILL OLIVIERI, R.N.;
DIANE DIRIENZO, R.N.;
LISA PRISHEL, R.N.;
DEBRA STUBEUSZ, M.D.;
ANJUM HAQUE, M.D.;
BERTRAM BARALL, M.D.;
KELLY KONESKY, LCSW-R;
DANA MANCINI, SW2;
JOHN and JANE DOES 1-10;
and JOHN and JANE SMITH 1-14,

Defendants.

MOTION BY: Cheryl Meyers Buth, Esq., Attorney for
Defendant **SERGEANT TIMOTHY LEWALSKI**

DATE, TIME & PLACE: Before Hon. Jeremiah J. McCarthy, United States
Magistrate Judge, United States Courthouse, 2
Niagara Square, Buffalo, New York, on
a date and time to be determined.

SUPPORTING PAPERS: Affirmation of Cheryl Meyers Buth, Esq.,
dated September 15, 2020 in support of motion

RELIEF REQUESTED: An Order Dismissing Plaintiff's First and Second
Causes of Action as a matter of law pursuant to
Federal Rule of Civil Procedure 12(b)(6).

Pursuant to Local Rule 7(a)(1), notice is hereby given that the Moving Defendants intend to file reply papers. Pursuant to Local Rule 7(b) any opposing papers must be served at least fourteen (14) days prior to the return date of the motion unless otherwise ordered by the Court.

Dated: Orchard Park, New York
September 15, 2020

Yours etc.

/s/Cheryl Meyers Buth
Cheryl Meyers Buth, Esq.
MEYERS BUTH LAW GROUP pllc
*Attorneys for Defendant Sergeant Timothy
Lewalski*
21 Princeton Place, Suite 105
Orchard Park, New York 14127
(716) 662-4186
cmbuth@mblg.us

TO: Katherine R. Rosenfeld, Esq.
Marissa Benavides, Esq.
Emery Celli Brinckerhoff & Abady, LLP
*Attorneys for Plaintiffs Darlene McDay,
individually and as Executrix of the Estate
of Dante Taylor, and Temple McDay*
600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000
krosenfeld@ecbalaw.com
mbenavides@ecbalaw.com

CC: David J. Sleight, Esq.
Office of the Attorney General
*Attorneys for Margaret Stirk, Kristen Muratore,
Sergeant Scott Lambert, C.O. Freeman,
C.O. Mark Collett, C.O. Greighton, C.O. Theal,
C.O. Baron, Jill Olivieri, R.N., Diane Dirienzo, R.N.,
Lisa Prishel, R.N., Debra Stubeusz, M.D., Anjum
Haque, M.D., Bertram Barall, M.D., Kelly Konesky,
LCSW-R, and Dana Mancini, SW2,*
Main Place Tower, Suite 300A
350 Main Street
Buffalo, New York 14202
(716) 852-6274
david.sleight@ag.ny.gov

Joseph M. LaTona, Esq.
Attorney for C.O. McDonald
403 Main Street, Suite 716
Buffalo, New York 14203
(716) 842-0416
sandyw@tomburton.com

Eric M. Soehnlein, Esq.
Sean M. O'Brien, Esq.
Lippes Mathias Wexler Friedman LLP
Attorneys for C.O. Thomas White
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202
(716) 853-5100
esoehnlein@lippes.com
sobrien@lippes.com

Daniel J. Henry, Jr., Esq.
Villarini & Henry, L.L. P.
Attorney for C.O. J. Horbett
16 Main Street
Hamburg, New York 14075
(716) 648-0510
dhenry@villariniandhenry.com

Brian Melber, Esq.
Rodney O. Personius, Esq.
Scott R. Hapeman, Esq.
Personius Melber LLP
Attorneys for C.O. D. Janis
2100 Main Place Tower
350 Main Street
Buffalo, New York 14202
(716) 855-1050
bmm@personiusmelber.com
rop@personiusmelber.com
srh@personiusmelber.com

Barry N. Covert, Esq.
Diane M. Perri Roberts, Esq.
Patrick J. Mackey, Esq.
Lipsitz Green Scime Cambria LLP
Attorneys for C.O. Melvin Maldonado
42 Delaware Avenue, Suite 120
Buffalo, New York 14202
(716) 849-1333
bcovert@lglaw.com
droberts@lglaw.com
pmackey@lglaw.com